

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item 35 ID# 4927
RESOLUTION E-3955
September 22, 2005

R E S O L U T I O N

Resolution E-3955. Pacific Gas and Electric ("PG&E") requests Commission approval of its proposed Resource Adequacy Capacity Product contract language. PG&E's request is approved with modifications.

By PG&E Advice Letter ("AL") 2695-E, filed August 3, 2005.

SUMMARY

In AL 2695-E, PG&E seeks approval of its proposed Resource Adequacy Capacity Product (RA or RA Capacity Product) contract language. The filing requests approval of (1) the proposed RA as reasonable, in compliance with PG&E's approved procurement plan; and (2) that volumes procured in accordance with this definition will count towards resource adequacy requirements (RAR) and the costs associated with the RA Capacity Product are authorized for recovery through PG&E's Energy Resource Recovery Account (ERRA). In order to allow adequate time for PG&E to fulfill its incremental RA portfolio need for 2006, PG&E had requested that Energy Division approve its filed advice letter by September 2, 2005. PG&E's request is approved with modifications.

BACKGROUND

As PG&E explains in its Advice Letter filing, the purpose of the request is to "establish a bridging strategy that will PG&E to begin contracting for RA Capacity Product to satisfy 2006 RAR, while Commission action on the final RAR requirements is pending." (AL, p. 1) In Decision (D.) 04-10-050, the Commission required that Load Serving Entities ("LSE's") begin compliance with resource adequacy requirements beginning in June 2006. In D.04-10-035, the Commission adopted Phase 1 issues and set a schedule for workshops to address unresolved issues with an expected final decision on all

remaining RAR issues, including a refined capacity product definition by June 2005. LSE would be required to submit the first Annual-Ahead compliance filing in September 2005 or 90 days after the final Phase 2 decision was issued. The delay in workshops and ultimately in issuing a final decision resolving outstanding issues, poses problems for LSEs to procure capacity and to do so in a timely manner to meet compliance filing requirements.

In Advice Letter 2615-E, Energy Division had previously approved PG&E's use of a "Resource Adequacy product. However, since approval of that product, PG&E notes that the definition of the product was not clear enough for most generators to offer RA services. Specifically, counterparties were reluctant to offer stand-alone capacity products because (1) the obligations of the seller towards the CAISO was not fully defined, (2) there remained a lack of clarity on how the requirements would be implemented by the CAISO, and (3) payments to sellers would be made only after the Commission ruled that the product was eligible and the CAISO was able to implement the service.

As part of the Phase 2 workshops, Silicon Valley Manufacturing Group (SVMG) (now known as Silicon Valley Leadership Group) proposed a RA Capacity Product definition which would include the required obligation of sellers to make their generation capacity available to the CAISO. Using SVLG's proposal as a starting point, PG&E has modified the contract language to fit its needs. In its AL, PG&E's RA Capacity definition include the following:

- The specified RA unit(s) is subject to CAISO dispatch for all hours in the operating day during the specified Delivery Period
- The obligation is solely CAISO dispatch, with no energy call rights by the Buyer
- CAISO's dispatch rights are explicitly defined in Section 3, and seller ensures that the capacity is subject to FERC's must-offer obligation (MOO) as long as it is in place. It also defines the CAISO's call rights in the event MOO is no longer in place and before the CAISO's MRTU is implemented
- Prohibits the Seller to commit the identified capacity to any other party other than Buyer for RA purposes.

¹ Advice Letter 2695-E, page 5

Finally, PG&E's proposed product definition cites RA commitment obligations defined in D.04-10-035 and would not include imports, dynamically scheduled units, partial units, or pooling of units in its solicitation.

NOTICE

Notice of PG&E AL 2695-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed to the service list for R.01-10-024 and R.04-04-003 in accordance with General Order 96-A, Section III, Paragraph G.

PROTESTS

Comments and Protests were timely filed on August 23, 2005, by the Cogeneration Association of California and the Energy Producers and Users Coalition ("CAC/EPUC"), the Independent Energy Producers Association and the Western Power Trading Forum ("IEP/WPTF"), Occidental Power Services, Inc. ("OPSI"), PPM Energy ("PPM"), and Southern California Edison ("Edison" or "SCE"). Responses to comments were timely filed on August 30, 2005, by PG&E.

Out-of-time responses were filed on August 31, 2005, by the California Independent System Operator Corporation ("CAISO").

While not taking a position on whether the RA Capacity Product definition is appropriate for merchant generators, CAC/EPUC protests that the definition is not universally appropriate for all cogeneration operations. CAC/EPUC point out that the Phase 2 Workshop Report anticipates that QFs, including those which employ cogeneration technologies, may participate as resources for RAR purposes. Specifically, cogeneration QFs are integrally connected to the steam output for industrial uses, cogeneration QF must have the ability to run without being subjected to possible curtailment or CAISO dispatch obligations which would jeopardize the host's requirements. Essentially, CAC/EPUC believe that PG&E's contract language has potential limitations on the use of QFs or would make QFs unable to RA requirements.

While recognizing that PG&E's AL has acknowledged that some issues remain to be resolved², IEP/WPTF and OPSI nonetheless support PG&E's RA Capacity Product definition but urge the Commission extent approval of the contract language to all other LSEs under the same terms and conditions adopted for PG&E. On the other hand, SCE urges the Commission to make clear that PG&E's proposed definition is to be viewed as one of many possible (and not the only) products that LSEs can use to meet RA requirements.

SCE is concerned that the proposed definition does not bind other LSE from soliciting capacity product they expect to meet 2006 RA requirements prior to definitive clarification in the Phase 2 decision. Procedurally, SCE emphasizes that the Commission must make clear that any guidance or decision provided in PG&E's AL not preclude any LSEs from counting any resource that they are currently procuring in line with established CPUC guidance on resource adequacy procurement. SCE notes that while PG&E's definition may be fit within workshop discussion, other definitions also fit for which the Commission may ultimate adopt.

Finally, SCE notes that PG&E's AL does not address the impact of the proposed product on identified local area resource adequacy requirements. PG&E's requirement that capacity must be deliverable to the CAISO does not address how purchase of a product in another LSE's local area will affect the local area resource adequacy requirements. SCE's suggests that the "only practical solution to this issue is to reduce the remaining local area capacity obligation in the affected local area ... since the capacity meeting the local area resource adequacy needs will have already been secured for that area by PG&E." (SCE comments, p 2-3)

PPM's main concern is PG&E's exclusion of all imports because of unresolved issues with the allocation of intertie capacity. PPM points out that excluding all imports is overly broad and would exclude imports with firm transmission access. As such, "PPM urges the Commission to narrowly define the problem such that the exclusion applies only to those imports that cannot demonstrate firm transmission and therefore require an allocation of intertie capacity." (PPM Comments, page 1)

² In particular, IEP/WPTF note that PG&E will not include in its solicitation consideration of partial or pooling of units, imports, and minimum load compensation.

The CAISO raised issues with coordination between the CPUC's RA Requirements and its own Market Redesign and Technology Upgrade project ("MRTU") and suggested redline edits to PG&E's proposed contract language to properly align the intersection between the two.

First, the CAISO is concerned that by indicating that the seller shall recover various costs³ after the Federal Energy Regulatory Commission's ("FERC") existing must-offer obligation ("MOO") but before implementation of the CAISO's MRTU, section 3.1.D presumes the existence of certain CAISO Tariff provisions. It is not certain that certain CAISO cost-recovery provisions will exist if the FERC terminates its must-offer obligation.

Secondly, the CAISO points out that there is uncertainty on whether the CAISO should pay an availability payment to all capacity that is committed in the MRTU residual unit commitment ("RUC") process. If the Commission intends for RA resources to receive only an RA capacity payment or a RUC availability payment, then the resource meeting PG&E's RA Capacity Product definition should be required to be a price taker and credit any revenues to the load-serving entity.

Since the CAISO filed out-of-time comments, PG&E's response addresses all comments/protests except for the CAISO's.

DISCUSSION

Like most parties' comments on the AL, we applaud PG&E's efforts to define a product to meet 2006 RA requirements. We appreciate that the timing of this phase of the proceeding has imposed constraints on LSEs to begin contracting for capacity to meet the year-ahead requirement. In particular, we are cognizant of the fact that many issues are yet unresolved and that the definition of a capacity product is at least useful, and may be necessary for some LSEs, before LSEs can begin procuring capacity. We must be clear that because this Advice Letter comes to us on the eve of the Commission's final Phase 2 decision, our approval of PG&E's RA Capacity Product extends only through 2006, will be superseded by the product definition adopted by

³ Costs include those for minimum load, start-up, emissions, additional energy and Ancillary Services.

the final Commission decision on RAR (which may be broader and more refined), is to be viewed as only one of the possible products which may meet RA requirements, and may be used by all LSEs to meet 2006 RA requirements. Any contract utilizing the adopted capacity product definition that extends beyond 2006 should provide for the incorporation of the product definition adopted by the Commission in the Phase 2 decision. We view this as a temporary measure as we transition into a fully implementable resource adequacy requirements. However, we should clarify that contracts using other product definitions (e.g. tolling contracts) can be for longer than 2006.

With respect to those issues PG&E proposes to exclude as part of its solicitation based on this capacity product definition, the Commission is concerned that PG&E may procure its full capacity requirements for 2006 using this simplified definition without making some simple assumptions about the expected level of import allocations and specific requirements for local area needs. In response to PPM, PG&E acknowledges that while PPM has firm transmission to the California-Oregon border (“COB”), capacity delivered to COB nonetheless is subject to CAISO intertie allocations in order to count towards RA requirements. We note that the Commission will make some clear determination of the level of allocated import capacity to each LSE based on an approach discussed in the Phase 2 Workshops. While we do not yet know the level of allocations to PG&E, or any other LSE, it would be wrong to not make provisions for some expected level of import allocation. In the case of PG&E, or any other LSE, the amount might be small, but could impose extra costs if an entity over-procures capacity.

Similarly, we share Edison’s concern that there could be an impact of PG&E’s proposed capacity product on identified local area RA needs. In reply comments, PG&E’s agrees that any capacity purchased within a local area, should count towards meeting the CAISO’s identified physical local area needs. However, PG&E also suggests that there will be a “low probability” that PG&E will purchase local capacity using this product definition. However, we note that PG&E intends to procure incremental capacity to meet its full 2006 requirements. We are not reassured simply to know that PG&E believes there is a low probability that it will procure much local capacity. On the other hand, we agree with PG&E that Edison’s conclusion that the only logical outcome to address local area needs is to reduce the local area capacity obligations by the amount procured by any LSE goes beyond the scope of this Advice Letter. This proposal has

clear implications beyond the limited focus of this AL.⁴ Without binding the outcome of the final Phase 2 decision, we note that the final phase 2 decision will determine what existing contracted capacity and specific unit ownership counts toward RA requirements. Adopting Edison's logical solution will impact other existing units and contracts. As we adopt this AL, we also wish not to do so in a manner that limits its impact on any outcomes ultimately adopted in the final phase 2 decision. As such, we do not agree with Edison that the "only logical" outcome is to reduce the local area obligations by the amount of existing contracted capacity within a local area and will not adopt Edison's suggestion.

CAC/EPUC is concerned that the proposed language could preclude cogeneration QFs from qualifying as provisions in the CAISO dispatch obligations requires generators from responding to curtailment of specific operational changes than what are need on-site. We remind CAC/EPUC that PG&E's proposed contract language is only one of many possible product definitions. Further, the Commission's final phase 2 decision will refine the definition for capacity products that meet the Commission's adopted RA requirements. We will not make specific determinations in this resolution about cogeneration QFs since most QFs are currently under contract to some extent. We realize that PG&E's definition will likely exclude some other forms of generation, but in balancing the need to move forward for 2006 with the need to not step ahead of ourselves in making determinations that are more appropriate in a final Commission decision, we will not adopt CAC/EPUC's suggestions at this time.

Finally, the CAISO raises some valid coordination issues the Commission will need to consider. The CAISO proposed red-lined changes to PG&E's contract language for section 3.1.B regarding the seller's obligations to the CAISO with more specific dispatch language and in section 3.1.D regarding cost recovery in the event the FERC terminates its must-offer obligation before the CAISO implements its MRTU. We agree with the proposed language revisions suggested by the CAISO for section 3.1.B. With respect to section 3.1.D, the CAISO was concerned with the last sentence in the section which stated that

⁴ For example, would existing contracts which may meet RA requirements also reduce the local area obligations? Would this "logical conclusion" extend to DWR contracts?

Seller shall then be compensated for minimum load costs, start-up costs, emission costs and the costs for additional energy and any Ancillary Services provided pursuant to this Section 3.1.D by the CAISO through a successor tariff.

The current cost recovery mechanism is the CAISO Tariffs as part of the FERC's must-offer obligation. In the RAR workshops, there was concern that the FERC might lift its must-offer obligation prior to the CAISO implementing MRTU. If that scenario were to occur, the CAISO would have no existing Tariff in place that would permit cost recovery of the various costs addressed in the language proposed by PG&E. The CAISO suggested that to prevent jeopardizing the effectiveness of the proposed contract language, the Commission include some provision that if no successor tariff exists, the parties would come to some agreement amongst themselves. In responses to parties' comments, PG&E addressed this same issue and suggested some language changes to this section. PG&E proposes that the CAISO and appropriate stakeholders will work together to consider what, if any, successor tariff language is needed after the MOO obligation expires. While on the face of these two proposed changes it would appear that the CAISO's language is simpler and easier to implement because it leaves the issue of cost recovery in the hands of the counterparties, we note that all parties will ultimately be subject to the CAISO's tariff language. As we have been moving to implement a statewide approach to resource adequacy, we have a need to coordinate extensively with all stakeholders involved. We find that PG&E's suggested changes are appropriate and make the modifications it suggests for the last sentence of section 3.1.D. However, for all other CAISO proposed changes, we defer to the CAISO and modify PG&E's contract language to reflect those changes. Appendix A shows the final adopted clean version of the contract language and appendix B shows the red-lined version.

Additionally, the CAISO requested some clarification on the Commission's intent for potential double-recovery by generators through RUC availability payments. While again, this is an issue to be fully addressed in the final phase 2 decision, this Commission has been very clear that it is unwilling to pay any cost for reliability. It is not the intention of this Commission to simply provide needless revenue streams, or the ability to double-recover costs, to generators. It is the Commission's position that an RA resource that receives an RA payment should not also receive a RUC availability payment through the CAISO.

COMMENTS

Public Utilities Code section 311(g)(1) requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day period may be reduced or waived pursuant to Commission adopted rule.

The 30-day comment period for this resolution has been reduced in accordance with the provisions of Rule 77.7(f)(9). Rule 77.7(f)(9) provides that the Commission may waive or reduce the comment period for a decision when the Commission determines that public necessity required reduction or waiver of the 30-day period for public review and comment. For purposes of Rule 77.7(f)(9), "public necessity" refers to circumstances in which the public interest in the Commission's adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment, and includes circumstances where failure to adopt a decision before expiration of the 30-day review and comment period would cause significant harm. The public necessity in this case is that the Commission needs to address PG&E's AL 2695-E as soon as possible prior to the final decision in the Resource Adequacy Phase 2 portion of the procurement proceeding.

In this case, the public necessity requiring a reduction in the comment period outweighs the public interest in having the full 30-day period for review and comment. Thus, pursuant to Rule 77.7(f)(9), we provide for a shortened comment period and provide for no reply comments. Comments on Resolution E-3955 are due by 5pm on September 19, 2005.

FINDINGS

1. By AL 2695-E, PG&E seeks approval of a proposed simplified Resource Adequacy Capacity Product contract language to meet Resource Adequacy Requirements in 2006.
2. PG&E requests approval of the proposed RA as reasonable, in compliance with PG&E's approved procurement plan.
3. PG&E requests that volumes procured in accordance with this definition will count towards resource adequacy requirements (RAR) and the costs associated with the

RA Capacity Product are authorized for recovery through PG&E's Energy Resource Recovery Account (ERRA).

4. Timely comments were filed by the Cogeneration Association of California and the Energy Producers and Users Coalition, the Independent Energy Producers Association and the Western Power Trading Forum, Occidental Power Services, Inc., PPM Energy ("PPM"), and Southern California Edison ("Edison" or "SCE").
5. Timely responses to comments were timely filed on August 30, 2005, by PG&E.
6. Out-of-time responses were filed on August 31, 2005, by the California Independent System Operator Corporation ("CAISO").
7. The Commission will be issuing a Resource Adequacy Phase 2 decision soon.
8. The Phase 2 Decision will address all outstanding RAR issues and define a Capacity Product.
9. This Advice Letter is an appropriate intermediate measure to help ensure PG&E meets its 2006 Resource Adequacy Requirements.
10. It's appropriate to extend authority to use the adopted simplified definition to other LSEs.
11. This definition is potentially only one a possible others which can meet RA requirements.

THEREFORE IT IS ORDERED THAT:

1. The request of Pacific Gas & Electric Company for Resource Adequacy Capacity Product definition is approved with the modifications outlined above and in Appendix B. Appendix A includes the clean version of the adopted contract language.
2. PG&E will not exclude the expectation of imports in its solicitation process.
3. This RA Capacity Production definition adopted in this resolution only applies for 2006.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 22, 2005; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

Appendix A
Clean Version

Resource Adequacy Capacity Product Definition

1. Definitions:

- 1.1 “Resource Adequacy (“RA”) Capacity Product, or RA Capacity” means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer’s Resource Adequacy Requirements (“RAR”) as described in D.04-10-035, and as may be amended from time to time by the California Public Utilities Commission (“CPUC”) in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR. RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller’s Unit(s) other than the right to count such Contract Quantity toward Buyer’s RAR during the Delivery Period. Specifically, no energy associated with Seller’s Unit(s) is required to be made available to Buyer as part of this RA Capacity obligation, and Buyer shall in no way be responsible to compensate Seller for any commitments to CAISO as set forth in this Transaction.
- 1.2 “Contract Quantity” means the amount of RA Capacity as set forth in this Transaction.
- 1.3 “Unit” or “Units” shall mean the generation assets described as follows [Note: to be repeated for each Unit if more than one.]:

Name: _____

Location: _____

Substation Name (point of interconnection with the California Independent System Operator (“CAISO”) Controlled Grid) (“Substation”):

Current CAISO Zone in which Substation resides: _____

2. Representation and Warranties:

- 2.1 Seller and Buyer represent and warrant that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the

Contract Quantity for the sole benefit of Buyer's RAR. Such commercially reasonable actions may include but are not be limited to the following:

- A. Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Quantity for RAR purposes. This includes meeting requirements established by the CPUC in its resource adequacy counting protocols, including demonstration of the ability to deliver the Contract Quantity over all hours required for full RAR eligibility, and demonstrating that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CPUC or other regional entity or entities responsible for RA administration;
- B. Negotiating in good faith to make necessary amendments, if any, to this Transaction to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC or regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and
- C. Using “Good Utility Practice,” as defined in the CAISO Tariff, with respect to maintenance of Unit(s); however, such commercially reasonable actions shall not include any obligation that the Seller undertake capital improvements, facility enhancements, or the construction of new facilities.

2.2 Seller represents and warrants that throughout the Delivery Term:

- A. Seller has ownership of, or a demonstrable exclusive right⁵ to control the Unit(s) located within the CAISO Control Area or connected to the CAISO Controlled Grid;
- B. Buyer has the exclusive right to count the Contract Quantity from Unit(s) toward Buyer’s RAR;
- C. No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, or analogous obligations in other markets,

⁵ Such rights for RA could be acquired through bilateral contracting.

unless through a Reliability Must Run (“RMR”) contract between Seller and CAISO;

D. Should Seller schedule Contract Quantity as energy outside the CAISO, or commit energy to a third party in a manner that would result in scheduling up to the Contract Quantity as energy outside the CAISO, it shall do so only as allowed by, and in accordance with, the CAISO Tariff and final RA rules approved by the CPUC; and

E. Seller shall abide by all applicable CAISO rules and procedures approved by the FERC, and RA rules approved by the CPUC.

3. CAISO Dispatch Requirements:

3.1 Unless Unit(s) are forced out of service, are undergoing planned maintenance or are affected by an event of force majeure that results in a partial or full outage, Seller shall commit the full remaining Contract Quantity to the CAISO in compliance with one or more of the following:

A. Seller shall Self-Schedule the Contract Quantity for energy delivery within the CAISO control area; if Seller schedules less than the full Contract Quantity, the remaining Contract Quantity will be subject to provisions of 3.1B, C or D below;

B. Seller shall bid the Contract Quantity⁶ into the CAISO integrated forward market (“DA IFM”) for all hours of the operating day when such a market is established, and to the extent such bids are cleared in such CAISO DA IFM, Seller shall provide that portion of the Contract Quantity cleared in the DA IFM to the CAISO in accordance with the CAISO Tariff. To the extent the Contract Quantity is not cleared in such DA IFM, Seller shall schedule, or submit supplemental energy or Ancillary Services bids regarding the remaining Contract Quantity volumes into the CAISO Hour-Ahead Scheduling Process (“HASP”) (if such a market is established); however, any

⁶ The intent of referencing the CAISO Tariff is that Seller is not constrained on bidding energy or Ancillary Services prices other than what is contained in the CAISO Tariff, unless otherwise agreed by Buyer and Seller.

Unit(s) not committed through the DA IFM or Day-Ahead Residual Unit Commitment (“RUC”)⁷ and whose start-up time do not permit such Unit(s) to be committed in HASP will be relieved of its obligations for that operating day. Seller’s Unit(s) will remain available to CAISO through its RUC process after each market closes, if such a process is developed. .

- C. If FERC’s Must Offer Obligation (“MOO”) is operative, Seller shall make all Unit(s) subject to MOO. In the event of a Must Offer Waiver Denial (“MOWD”) by the CAISO, Seller shall submit supplemental energy or Ancillary Service bids² to the CAISO from the Unit(s); and/or
- D. If FERC’s MOO is no longer operative and the CAISO has not implemented its Market Redesign Technical Update (“MRTU”), Seller shall make Unit(s) subject to the same obligations to the CAISO and timelines that exist under the current MOO process. Seller shall submit Hour-Ahead (if it exists) schedules and/or supplemental energy or Ancillary Services bids² for the Contract Quantity for all hours for which the Unit(s) has been committed by the CAISO pursuant to the following rights granted by the Parties to the CAISO through this Transaction: (1) the CAISO shall have the right to commit any type of Unit(s) on a Day-Ahead basis; and (2) the CAISO shall have the right, on an intra-hour or Hour-Ahead basis, to call on supplemental energy and/or Ancillary Services from only those Unit(s) whose start-up time permits such a call. The CAISO and appropriate stakeholders will work together to consider what, if any, successor tariff language is needed after the MOO obligation expires.

4. RA Capacity Delivery Point.

The Delivery Point for each Unit shall be the Substation Name for each Unit as set forth in Section 1.3.

(END APPENDIX A)

⁷ Seller’s bid for capacity availability in the RUC process shall be priced at zero. Units contracted for RA purposes are intended to be price takers for capacity since that element has already been compensated for through this RA contract.

{Additional commercial terms that include repayment of any capacity availability payment received from the CAISO will be included in the commercial terms of PG&E’s final confirm.}

Appendix B
Red-Lined Version

Resource Adequacy Capacity Product Definition

1. Definitions:

- 1.1 “Resource Adequacy (“RA”) Capacity Product, or RA Capacity” means the qualified and deliverable capacity from Unit(s) that can be counted toward Buyer’s Resource Adequacy Requirements (“RAR”) as described in D.04-10-035, and as may be amended from time to time by the California Public Utilities Commission (“CPUC”) in the Resource Adequacy phases of Rulemaking 04-04-003 or by any successor proceeding, and all other resource adequacy requirements established by any other regional entity responsible for RAR. RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller’s Unit(s) other than the right to count such Contract Quantity toward Buyer’s RAR during the Delivery Period. Specifically, no energy associated with Seller’s Unit(s) is required to be made available to Buyer as part of this RA Capacity obligation, and Buyer shall in no way be responsible to compensate Seller for any commitments to CAISO as set forth in this Transaction.
- 1.2 “Contract Quantity” means the amount of RA Capacity as set forth in this Transaction.
- 1.3 “Unit” or “Units” shall mean the generation assets described as follows [Note: to be repeated for each Unit if more than one.]:

Name: _____

Location: _____

Substation Name (point of interconnection with the California Independent System Operator (“CAISO”) Controlled Grid) (“Substation”):

Current CAISO Zone in which Substation resides: _____

2. Representation and Warranties:

- 2.1 Seller and Buyer represent and warrant that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the

Contract Quantity for the sole benefit of Buyer's RAR. Such commercially reasonable actions may include but are not be limited to the following:

- A. Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Quantity for RAR purposes. This includes meeting requirements established by the CPUC in its resource adequacy counting protocols, including demonstration of the ability to deliver the Contract Quantity over all hours required for full RAR eligibility, and demonstrating that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CPUC or other regional entity or entities responsible for RA administration;
- B. Negotiating in good faith to make necessary amendments, if any, to this Transaction to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC or regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and
- C. Using “Good Utility Practice,” as defined in the CAISO Tariff, with respect to maintenance of Unit(s); however, such commercially reasonable actions shall not include any obligation that the Seller undertake capital improvements, facility enhancements, or the construction of new facilities.

2.2 Seller represents and warrants that throughout the Delivery Term:

- A. Seller has ownership of, or a demonstrable exclusive right⁸ to control the Unit(s) located within the CAISO Control Area or connected to the CAISO Controlled Grid;
- B. Buyer has the exclusive right to count the Contract Quantity from Unit(s) toward Buyer’s RAR;
- C. No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, or analogous obligations in other markets,

⁸ Such rights for RA could be acquired through bilateral contracting.

unless through a Reliability Must Run (“RMR”) contract between Seller and CAISO;

D. Should Seller schedule Contract Quantity as energy outside the CAISO, or commit energy to a third party in a manner that would result in scheduling up to the Contract Quantity as energy outside the CAISO, it shall do so only as allowed by, and in accordance with, the CAISO Tariff and final RA rules approved by the CPUC; and

E. Seller shall abide by all applicable CAISO rules and procedures approved by the FERC, and RA rules approved by the CPUC.

3. CAISO Dispatch Requirements:

3.1 Unless Unit(s) are forced out of service, are undergoing planned maintenance or are affected by an event of force majeure that results in a partial or full outage, Seller shall commit the full remaining Contract Quantity to the CAISO in compliance with one or more of the following:

A. Seller shall Self-Schedule the Contract Quantity for energy delivery within the CAISO control area; if Seller schedules less than the full Contract Quantity, the remaining Contract Quantity will be subject to provisions of 3.1B, C or D below;

B. Seller shall bid the Contract Quantity⁹ into the CAISO integrated forward ~~Day-Ahead energy~~ market for all hours of the operating day when such a market is established, and ~~if to the extent~~ such bids are cleared in such CAISO ~~DA IFM~~ ~~ay-Ahead energy market~~, Seller shall provide that portion of the Contract Quantity cleared in the DA IFM to the CAISO in accordance with the CAISO Tariff; ~~however, if~~ To the extent the Contract Quantity is not cleared in such CAISO ~~DA IFM~~ ~~ay-Ahead energy market~~, Seller shall schedule or submit supplemental energy or Ancillary Services bids regarding the remaining Contract Quantity volumes into the CAISO Hour-Ahead

⁹ The intent of referencing the CAISO Tariff is that Seller is not constrained on bidding energy or Ancillary Services prices other than what is contained in the CAISO Tariff, unless otherwise agreed by Buyer and Seller.

Scheduling Process (“HASP”) energy market (if such a market is established); however, any Unit(s) not committed through the DA IFM or Day-Ahead Residual Unit Commitment (“RUC”)¹⁰ ~~and supplemental energy or Ancillary Service bids to the CAISO from such Unit(s)~~ whose start-up time do not permits such Unit(s) to be committed ~~ment~~ in HASP will be relieved of its obligations for that operating daysuch markets. Seller’s Unit(s) will remain available to CAISO through its RUC Residual Unit Commitment (“RUC”) process after each market closes, if such a process is developed.

- C. If FERC’s Must Offer Obligation (“MOO”) is operative, Seller shall make all Unit(s) subject to MOO. In the event of a Must Offer Waiver Denial (“MOWD”) by the CAISO, Seller shall submit supplemental energy or Ancillary Service bids² to the CAISO from the Unit(s); and/or
- D. If FERC’s MOO is no longer operative and the CAISO has not implemented its Market Redesign Technical Update (“MRTU”), Seller shall make Unit(s) subject to the same obligations to the CAISO and timelines that exist under the current MOO process. Seller shall submit Hour-Ahead (if it exists) schedules and/or supplemental energy or Ancillary Services bids for the Contract Quantity for all hours for which the Unit(s) has been committed by the CAISO pursuant to the following rights granted ~~by to~~ the Parties to the CAISO through this Transaction: (1) the CAISO shall have the right to commit call on any type of Unit(s) on a Day-Ahead basis; and (2) the CAISO shall have the right, on an intra-hour or Hour-Ahead basis, to call on supplemental energy and/or Ancillary Services from only those Unit(s) whose start-up time permits such a call. The CAISO and appropriate stakeholders will work together to consider what, if any, successor tariff language is needed after the MOO obligation expires. ~~Seller shall then be compensated for minimum load costs, start-up costs, emission costs and the costs for additional energy and any Ancillary Services provided pursuant to this Section 3.1.D by the CAISO through a successor tariff.~~

¹⁰ Seller’s bid for capacity availability in the RUC process shall be priced at zero. Units contracted for RA purposes are intended to be price takers for capacity since that element has already been compensated for through this RA contract.

{Additional commercial terms that include repayment of any capacity availability payment received from the CAISO will be included in the commercial terms of PG&E’s final confirm.}

4. RA Capacity Delivery Point.

The Delivery Point for each Unit shall be the Substation Name for each Unit as set forth in Section 1.3.

(END APPENDIX B)

September 13, 2005

Item 35, ID#4927 RESOLUTION E-3955
Commission Meeting September 22, 2005

TO: PARTIES TO PACIFIC GAS & ELECTRIC ADVICE LETTER NO 2695-E

Enclosed is draft Resolution Number E-3955 of the Energy Division. It will be on the agenda of the Commission meeting of September 22, 2005. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution. No reply comments will be accepted.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Jerry Royer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

A copy of the comments should be submitted to in hard copy and by email:

Manuel Ramirez
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
mzr@cpuc.ca.gov

Any comments on the draft Resolution must be received by the Energy Division by September 19, 2005 by 5pm by hard copy and by email to m zr@cpuc.ca.gov. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division, on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

No replies comments will be accepted.

Late submitted comments or replies will not be considered.

Judith Ikle, Chief
Energy Division

Enclosure: Service List
Service List - R.01-10-024, R.04-04-003

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-3955 on all parties in these filings or their attorneys as shown on the attached list.

Dated September 13, 2005 at San Francisco, California.

Jerry Royer

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.